

1                               **BEFORE THE ARIZONA CORPORATION COMMISSION**

2   JEFF HATCH-MILLER  
      Chairman  
3   WILLIAM A. MUNDELL  
      Commissioner  
4   MARC SPITZER  
      Commissioner  
5   MIKE GLEASON  
      Commissioner  
6   KRISTIN K. MAYES  
      Commissioner

8   IN THE MATTER OF THE COMMISSION  
9   ON ITS OWN MOTION INVESTIGATING  
10  THE FAILURE OF DESERT HILLS WATER  
11  COMPANY, INC. TO COMPLY WITH  
   COMMISSION RULES AND  
   REGULATIONS

**DOCKET NO. W-02124A-06-0379**

**COMPLAINT AND PETITION FOR  
ORDER TO SHOW CAUSE**

12  
13 **Scheduled for Commission Consideration**  
14 **at Special Open Meeting**  
15 **Friday, June 16, 2006 at 9:00 a.m.**  
   **1200 W. Washington**  
   **Phoenix, Arizona 85007**

16       Staff of the Utilities Division ("Staff") of the Arizona Corporation Commission  
17 ("Commission"), for its Complaint and Petition for Order to Show Cause against Desert Hills  
18 Water Company, Inc. ("Desert Hills" or "Company"), an Arizona Public Service Corporation,  
19 alleges:

20                               **JURISDICTION**

- 21       1. The Commission has jurisdiction to hear complaints against public service  
22       corporations pursuant to A.R.S. § 40-246. The Commission has jurisdiction to  
23       supervise and regulate public service corporations pursuant to Article XV of the  
24       Arizona Constitution and Title 40 of the Arizona Revised Statutes.
- 25       2. Respondent Desert Hills is a public service corporation as defined by Article XV of  
26       the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.
- 27       3. Pursuant to Decision No. 41279, issued April 5, 1971, Desert Hills received a  
28       Certificate of Convenience and Necessity ("CC&N") to provide water service in

1 Maricopa County. As a condition of its CC&N, Desert Hills is required to comply  
2 with Arizona law, Commission Orders and Commission Rules and Regulations.

- 3 4. Beginning on or about July 21, 2005, Staff began receiving informal complaints from  
4 prospective customers seeking water service within Desert Hills' CC&N, alleging  
5 the Company had refused to provide service. The Complainants advised Staff that  
6 Desert Hills was advising them that a moratorium on new service connections was in  
7 effect. Upon review following receipt of these complaints, Staff did not find that the  
8 Commission or any State agency had approved a moratorium on new service  
9 connections for Desert Hills.
- 10 5. On July 25, 2005, Desert Hills confirmed in its response to Staff's inquiry that, in the  
11 Company's opinion, a moratorium did exist due to problems with low pressure. The  
12 Company insisted that Staff had advised Desert Hills that any new requests for  
13 service via a main line extension would be denied. Upon review, Staff could find no  
14 evidence to support this claim. Desert Hills also advised Staff that a new well was  
15 in the planning stages to alleviate this problem.
- 16 6. Staff advised Desert Hills that it could not self-impose a moratorium or curtailment.  
17 Staff further advised Desert Hills of the filing requirements with the Commission  
18 prior to implementation of such a moratorium. Desert Hills was also advised that  
19 until the Commission had approved a moratorium, Desert Hills would be required to  
20 accept and process any main line extension requests, pursuant to its obligation to  
21 provide service within its CC&N.
- 22 7. Desert Hills did not submit any main line extension agreements for review and  
23 approval until September, 2005. When submitted to Staff, the main line extensions  
24 were approved, all within 48 hours of receipt by Staff. Nevertheless, complaints  
25 continued alleging undue delays in the bidding process or lack of communication  
26 with customers from Desert Hills on the status of these main line extension projects.
- 27 8. After a review of Desert Hills' water data usage report, which indicated that the  
28 utility may have more customers than it could adequately serve, Staff sent a letter to

Desert Hills on September 9, 2005, requesting that the Company submit a remedial plan by December 31, 2005, explaining how the utility planned to address the water storage and production needs within its certificated area. The letter also advised that such a plan needed to be put into effect no later than the summer of 2006.

9. Since July 2005, the Commission has received 69 requests for service and complaints regarding water outages and low pressure. Some of these complaints have been from individual homeowners and some from small developers.

10. Communication initiated by Staff to Desert Hills has often times been unsuccessful. Complaints have frequently gone unanswered by Desert Hills, despite numerous follow-up attempts by Staff. In addition, when Staff leaves messages at the utility office, there is commonly substantial time delay in returning calls by the utility.

11. Customers of Desert Hills have also had problems when contacting Desert Hills. On numerous occasions, customers have been unable to reach an operator when calling Desert Hills or have failed to receive responses when they left voice mails or sent e-mails.

12. On October 25, 2005, Staff met with Desert Hills to express its concerns and to discuss problems that Desert Hills was facing with growth and possible staffing problems within the utility itself. After that time, Desert Hills has failed to provide updates to either the consumers or the Staff on the status of bidding and construction process associated with main line extensions.

13. On January 5, 2006, Iron Gate Development, LLC., filed a formal complaint against the utility (Docket No. W-02124A-06-0005) for failure to provide water. On February 16, 2006, after the pre-hearing conference, Staff initiated discussions with Desert Hills and its legal counsel regarding the Company's failure to communicate with and otherwise provide information to Staff on a timely basis. It was agreed that further contact between Utilities Division Staff and Desert Hills would be conducted by e-mail, copying the Company's counsel and Commission Legal Staff in order to ensure prompt receipt and verification of future communications.

- 1       14. Communications with Desert Hills continued to be less than prompt and not  
2       responsive to Staff's requests. On March 22, 2006, several Commission Staff  
3       members visited the well site that had been under construction since January to  
4       check on drilling status. Desert Hills was also reminded to file for a curtailment and,  
5       if necessary, a moratorium. After the visit, Staff toured the CC&N area and found  
6       multiple "for sale" signs indicating high potential for growth. A letter was sent to  
7       Desert Hills on March 27, 2006, requesting a plan of how the utility would supply  
8       water to its customers for the next nine months. The correspondence required a  
9       response within ten days. No response was received.
- 10      15. Additionally, Desert Hills has yet to file its 2004 Annual Report with the  
11      Commission. When the 2003 Annual Report was reviewed, it appeared Desert Hills  
12      may be over-earning. The test year used for the Company's last rate case was 1987.
- 13      16. On April 27, 2006, Renaissance Partners, LLC. filed a formal complaint against  
14      Desert Hills (Docket No. W 02124A-06-0286) for failure to provide water. Desert  
15      Hills failed to file an answer pursuant to A.A.C R14-3-106(H). As a result, a pre-  
16      hearing conference is scheduled for June 21, 2006.
- 17      17. Desert Hills filed a Curtailment Tariff with the Commission on May 8, 2006.
- 18      18. On May 15, 2006, Desert Hills advised the Commission that the well which was  
19      being drilled was reported to produce only 35 gallons per minute ("gpm"), although  
20      it was expected to produce 240 gpm. At 35 gpm, production would not meet Desert  
21      Hills' requirements and the costs of the project in fact outweighed the intended  
22      benefit to the Company. Desert Hills subsequently abandoned the well.
- 23      19. Due to numerous calls of current customers reporting water outages, Staff scheduled  
24      a meeting on June 2, 2006, with Mary Beth Rowland, the owner of Desert Hills, to  
25      tour the system and discuss interim and long-term options to supply water to  
26      customers. Upon arrival at Desert Hills, Staff was told that Mary Beth Rowland was  
27      unavailable and unreachable by telephone. Mary Ripplinger (Company President)  
28      was reportedly on vacation. The office manager offered to drive Staff but did not

1 know the system. Staff stated the need to be accompanied by an operator or  
2 engineer who knew the system. Mr. Larry Rowland later arrived and accompanied  
3 Staff.

4 20. On June 2, 2006, Staff was informed by customers that Desert Hills had inaccurately  
5 noticed customers of the implementation of a curtailment tariff. The curtailment  
6 tariff indicated that it was issued on April 4, 2006, and effective May 4, 2006.  
7 However, docket records show that the Company filed for the tariff on May 8, 2006.

8 21. Grounds exist to assess civil penalties against Desert Hills pursuant to Arizona  
9 Revised Statutes §§ 40-424 and 40-425, in an amount not less than \$100 nor more  
10 than \$5,000 for each day of violation of Commission Statutes, Rules, Regulations or  
11 Orders and other such relief as discussed below or as determined by the  
12 Commission.

### 13 COMPLAINT

#### 14 Count One

#### 15 (Violation of R-14-2-407(A))

16 22. Staff incorporates the allegations of Paragraphs 1 – 21 into this count.

17 23. A.A.C. R14-2-407(A) requires the utility to provide potable water to the customer's  
18 point of delivery. Desert Hills has failed to provide potable water to the customer's  
19 point of delivery. The Company has failed to process main line extensions in a  
20 timely manner. The Company also imposed a moratorium on new service  
21 connections, without Commission authorization. The failure to serve its customers  
22 is a violation of A.A.C. R14-2-407(A).

#### 23 Count Two

#### 24 (Violation of R-14-2-406.B.2.)

25 24. Staff incorporates the allegations of Paragraphs 1 – 23 into this count.

26 25. A.A.C. R14-2-406(B)(2) requires in relevant part: "Upon request by a potential  
27 applicant for a main extension, the utility shall prepare, without charge, a preliminary  
28 sketch and rough estimate of the cost of installation to be paid by said applicant. Any

1 applicant for a main extension requesting the utility to prepare detailed plans,  
2 specifications, or cost estimates may be required to deposit with the utility an amount  
3 equal to the estimated cost of preparation. The utility shall, upon request, make  
4 available within 45 days after receipt of the deposit referred to above, such plans,  
5 specifications, cost estimates of the proposed extension.” Desert Hills has failed to  
6 provide to applicants for a main extension the plans, specifications, and cost  
7 estimates within the required 45 day timeframe provided in A.A.C. R14-2-406(B)(2).  
8 Desert Hills’ failure to provide the information required for processing of main line  
9 applications by prospective customers within 45 days is a violation of A.A.C. R14-2-  
10 406(B)(2).

11 **Count Three**

12 **(Violation of R-14-2-406(J))**

- 13 26. Staff incorporates the allegations of Paragraphs 1 – 25 into this count.
- 14 27. A.A.C. R14-2-406(J) requires utilities to schedule all new requests for main line  
15 extensions, and provide service under main line extension agreements, promptly and  
16 in the order received. Desert Hills has not responded promptly to consumers or  
17 Commission Staff inquiries regarding the processing of main line extensions. Desert  
18 Hills has also failed to provide updated information regarding pending requests by  
19 customers. The failure by Desert Hills to schedule all new requests for main line  
20 extensions and for service under main line extension agreement requests is a  
21 violation of A.A.C. R14-2-406(J).

22 **Count Four**

23 **(Violation of R-14-2-407(C))**

- 24 28. Staff incorporates the allegations of Paragraphs 1 – 27 into this count.
- 25 29. A.A.C. R14-2-407(C) requires utilities to make reasonable efforts to supply a  
26 satisfactory and continuous level of service. Desert Hills has refused service to  
27 customers by not responding in a timely manner in processing requests for main line  
28 extensions. Desert Hills has also failed to provide updated information regarding

1 pending requests by customers. Desert Hills advised customers that the refusal of  
2 service was due to a moratorium on the installation of new meters. However, at the  
3 time no Commission approved moratorium existed. Customers of Desert Hills have  
4 experienced low pressure and water outages and have had difficulty contacting  
5 Desert Hills and getting a response. The failure to communicate with and to supply  
6 its customers with a satisfactory and continuous level of service is a violation by  
7 Desert Hills of A.A.C. R14-2-407(C).

8 **Count Five**

9 **(Violation of R-14-2-411(A)(2))**

- 10 30. Staff incorporates the allegations of Paragraphs 1 – 29 into this count.
- 11 31. A.A.C. R14-2-411(A)(2) requires utilities to: 1) “[m]ake a full and prompt  
12 investigation of all service complaints made by its customers, either directly or  
13 through the Commission;” 2) “[r]espond to the complainant and/or the Commission  
14 representative within five working days as to the status of the utility investigation of  
15 the complaint;” and 3) [n]otify the complainant and/or the Commission  
16 representative of the final disposition of each complaint. Upon request of the  
17 complainant or the Commission representative, the utility shall report the findings of  
18 its investigation in writing.” Desert Hills has failed to make a full and prompt  
19 investigation of all service complaints made by its customers, either directly or  
20 through the Commission. Desert Hills has failed to report the findings of its  
21 investigation, if any, to the Commission. Desert Hills has not responded within five  
22 working days to informal Commission complaints. Desert Hills’ failure to respond to  
23 the complainant and/or the Commission Staff constitutes a violation of A.A.C. R14-  
24 2-411(A)(2).

25 **Count Six**

26 **(Violation of A.R.S. § 40-321(B))**

- 27 32. Staff incorporates the allegations of Paragraphs 1 – 31 into this count.
- 28

33. Under A.R.S. § 40-321(B), except as provided in the Commission's rules, Desert Hills is required to provide service to any applicant within its service area who makes a "proper demand and tender of rates." By making a request for service and paying a deposit, customers have made a "proper demand and tender of rates" as contemplated by A.R.S. § 40-321(B). By failing to provide service to customers who have made a proper demand and tender of rates Desert Hills has therefore violated A.R.S. § 40-321(B).

**Count Seven**

**(Violation of A.R.S. § 40-321(A))**

34. Staff incorporates the allegations of Paragraphs 1 – 33 into this count.

35. A.R.S. § 40-321(A) provides: “[w]hen the commission finds that the equipment, appliances, facilities or service of any public service corporation, or the methods of manufacture, distribution, transmission, storage or supply employed by it are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the commission shall determine what is just, reasonable, safe, proper, adequate or sufficient, and shall enforce its determination by order or regulation.” By refusing to provide service without a Commission approved moratorium in effect and by causing unreasonable delays in processing requests for service (approximately 9 months to one year), Desert Hills has provided an “unjust, unreasonable,...improper, inadequate or insufficient” service in violation of A.R.S. § 40-321(A).

### Count Eight

**(Violation of Obligation to Serve)**

36. Staff incorporates the allegations of Paragraphs 1 – 35 into this count.

37. Desert Hills has an obligation as a public service corporation to provide service to anyone within its service area that makes a lawful request for service. Multiple customers have made a lawful request for service, and have failed to receive the service requested. Desert Hills has therefore violated its obligation to provide service to customers within its certificated area.

**Count Nine**

38. Staff incorporates the allegations of Paragraphs 1 – 37 into this count.
39. Under Article XV, § 3 of the Arizona Constitution, the Commission may enter “orders for the convenience, comfort, and safety, and preservation of the health” of the customers of a public service corporation. The Company’s continued failure to respond as required by Commission Rules and Arizona Statutes to requests for main line extensions and to complaints regarding the Company’s failure to provide adequate service requires an order by the Commission for the safety and preservation of health of Desert Hills’ customers. Therefore, the Commission should order that a manager selected by Staff be appointed by the Commission as the interim manager (the “Manager”) of Desert Hills’ water system until further order by the Commission, upon reasonable terms and conditions agreed between the Manager and Staff, with full authority to conduct the business and affairs of Desert Hills’ water system. Moreover, Desert Hills should be ordered to cooperate with and indemnify, defend and hold harmless the Manager for all claims related to its management of Desert Hills’ water system.
40. Although at this time Staff is not requesting that the Commission appoint a Manager prior to a hearing on this Petition, Staff is not intending to waive its right to request the appointment of a Manager prior to a hearing on this Petition. Staff would request the appointment of a Manager prior to hearing if circumstances warranted such action in order to protect the public interest and the health, safety, and welfare of customers or potential customers in the CC&N area served by Desert Hills.

**RELIEF**

41. Wherefore Staff requests that the Commission issue an **ORDER TO SHOW CAUSE** directing Desert Hills to appear and show cause:
- A. why its actions do not represent a violation of A.R.S. § 40-321(A);
  - B. why its actions do not represent a violation of A.R.S. § 40-321(B);
  - C. why its actions do not represent a violation of R14-2-407(A);

- D. why its actions do not represent a violation of R14-2-406(J);
- E. why its actions do not represent a violation of R14-2-407(C);
- F. why its actions do not represent a violation of R-14-2-411(A)(2);
- G. why its actions do not represent a violation of R14-2-406.B.2.;
- H. why its actions do not represent a violation of its obligations as a public service corporation;
- I. why a qualified Manager should not be appointed, as selected by Staff;
- J. why Desert Hills should not be ordered to cooperate with and indemnify, defend and hold harmless the Manager;
- K. why the Manager should not be given the authority to explore, negotiate, and implement a long-term water supply solution for Desert Hills;
- L. why Desert Hills should not be required to find an additional, adequate, and permanent sources of water to serve its customers;
- M. why a moratorium should not be issued on installing new water meters until further order by the Commission; and
- N. why other relief deemed appropriate by the Commission should not be ordered.

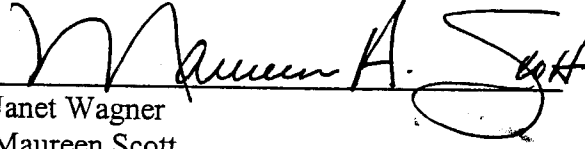
42. Staff further requests that after the conclusion of appropriate proceedings, a final

**OPINION AND ORDER** be entered:

- A. finding that Desert Hills has violated A.R.S. § 40-321(A);
- B. finding that Desert Hills has violated A.R.S. § 40-321(B);
- C. finding that Desert Hills has violated R14-2-407(A);
- D. finding that Desert Hills has violated R14-2-406(J);
- E. finding that Desert Hills has violated R14-2-407(C);
- F. finding that Desert Hills has violated R14-2-411(A)(2);
- G. finding that Desert Hills has violated R14-2-406.B.2.;
- H. finding that Desert Hills has violated its obligation to provide service under its CC&N as a public service corporation;

- 1 I. ordering Desert Hills to find and connect new, adequate and permanent  
2 sources of water to its system;  
3 J. ordering the appointment of a qualified Manager, selected by Staff;  
4 K. ordering Desert Hills to cooperate with and indemnify, defend and hold  
5 harmless the Manager;  
6 L. imposing fines and penalties pursuant to Article XV, Section 19 of the  
7 Arizona Constitution and A.R.S. §§ 40-424 and 40-425 in an amount not  
8 less than \$100 nor more than \$5,000 for each day of violation of  
9 Commission Statutes, Rules, Regulations or Orders;  
10 M. ordering a moratorium on installing new water meters until further notice by  
11 the Commission; and  
12 N. ordering such other relief as the Commission may find just and reasonable.

13  
14 RESPECTFULLY SUBMITTED this 6<sup>th</sup> day of June 2006.

15  
16  
17   
18 Janet Wagner  
19 Maureen Scott  
20 David Ronald  
21 Attorneys, Legal Division  
22 Arizona Corporation Commission  
23 1200 West Washington Street  
24 Phoenix, Arizona 85007  
25 (602) 542-3402

26 Original and thirteen (13) copies  
27 of the foregoing were filed this  
28 6<sup>th</sup> day of June 2006 with:

Docket Control  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

1 Copy of the foregoing mailed, faxed and  
e-mailed this 6th day of

2 June 2006 to:

3 Richard L. Sallquist  
4 Sallquist, Drummond & O'Connor PC  
5 4500 S. Lakeshore Drive  
6 Suite 339  
7 Tempe, AZ 85282  
8 Fax: (480) 345-0412  
9 dick@sd-law.com

10 Copy of the foregoing mailed  
11 this 6th day of June 2006 to:

12 Desert Hills Water Company  
13 34647 N. Tenth Street  
14 Phoenix, Arizona 85027

15 By Dawna Wilson